

C-5059

A. G. Contract No. KR03-1362TRN
ADOT ECS File: JPA 03-017
Project No.: STP-000-6(170)A
Section: 67th Avenue / Northern Avenue
TRACS: SR190 01C
BNSF AAR/DOT Nos. 025-413-R1
& 025-413-R2

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF GLENDALE

THIS AGREEMENT is entered into June 17, 2004 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "ADOT") and the CITY OF GLENDALE acting by and through its MAYOR and CITY COUNCIL, (the "City")

I. RECITALS

1. The ADOT is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
3. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.
4. Such project within the boundary of the City, has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.
5. The only interest of the ADOT in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 26895
Filed with the Secretary of State
Date Filed: 06/17/04

Janice K. Brewer
Secretary of State

By: Darryl D. Seacrenwald

6. The work embraced in this agreement and the estimated cost is as follows: Upgrade Railroad Crossing (67th Avenue and Northern Avenue).

Furnish and Install Cantilevers and Flashers (By railroad forces) Federal Aid Funds @ 100%	<u>\$105,106.00</u>
Total Protection work	\$105,106.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The ADOT shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the ADOT with the aid and consent of FHWA will authorize the Burlington Northern Santa Fe Railroad Company to proceed with the work covered by the ADOT-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the ADOT shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the City shall remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed there from.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the City right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

5. Upon completion of construction, the City shall provide like (exclusive of maintenance by the Railroad Company of its facilities), which may include, but is not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The ADOT assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the ADOT only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the

construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the ADOT in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the ADOT as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the ADOT's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the ADOT, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the ADOT, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the ADOT, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees. The indemnification obligations set forth herein do not apply to the statutory obligations of the Arizona Corporation Commission.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by FHWA, the City agrees to furnish and provide the ADOT with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received, if applicable.

3. This agreement shall remain in force and effect until completion of the work herein embraced; unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Larry Broyles, City Engineer
5850 W. Glendale
Glendale, Arizona 85301
(623) 930-3630

9. Non-Availability of Funds. Every payment obligation of ADOT and the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by ADOT and the City at the end of the period for which the funds are available. No liability shall accrue to

ADOT and the City in the event this provision is exercised, and ADOT and the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. In accordance with Arizona Revised Statutes Section 11-952, (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF GLENDALE

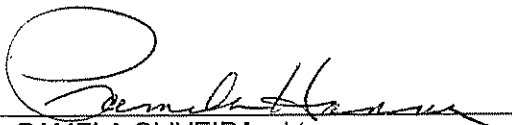
By 
ELAINE M. SCRUGGS
VICE Mayor

STATE OF ARIZONA

Department of Transportation

By 
SUSAN TELLEZ
Contract Administrator

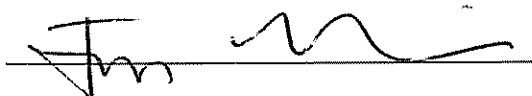
ATTEST:

By 
PAMELA OLIVEIRA HANIVA
Clerk

APPROVAL OF THE CITY OF GLENDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE CITY OF GLENDALE, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 12th day of May, 2004.



Attorney

RESOLUTION NO. 3754 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO THE BURLINGTON NORTHERN AND SANTA FE RAILWAY CROSSING AT 67TH AND NORTHERN AVENUES.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (JPA 03-017) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.


SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 11th day of May, 2004.



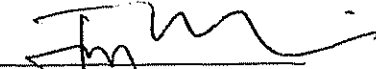
Vice MAYOR

ATTEST:



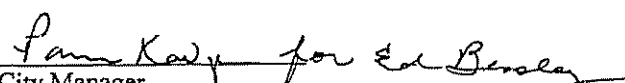
City Clerk (SEAL)

APPROVED AS TO FORM:



City Attorney

REVIEWED BY:



City Manager



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

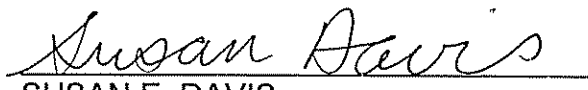
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1362TRN (**JPA 03-017**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 10, 2004

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section